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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON

7                   RICHARD ALLAN CASE,

8                   Plaintiff,

9                   v.

10                  UNITED STATES DEPARTMENT  
11                  OF JUSTICE, FEDERAL BUREAU  
12                  OF INVESTIGATION, and OFFICE  
13                  OF INFORMATION POLICY,

14                  Defendants.

15                   No. CV-12-0500-JTR

16                   ORDER ADOPTING REPORT AND  
17                   RECOMMENDATION

18                  **BEFORE THE COURT** is Magistrate Judge Rodgers' Report and

19                  Recommendation to Grant Defendants' Motion for Summary Judgment. ECF No.

20                  74. Plaintiff appears *pro se*. Defendants are represented by Rolf H. Tangvald.

21                  Plaintiff filed objections to the Report and Recommendation and Defendants filed  
22                  a response to Plaintiff's objections. ECF Nos. 77, 79, 80. The Court has  
23                  considered the briefing and the file, and is fully informed.

24                  Under 28 U.S.C. § 636(b)(1), a district court judge must make a *de novo*  
25                  determination of any part of the magistrate judge's report and recommendation to

26                  ORDER ADOPTING REPORT AND RECOMMENDATION - 1

which an objection is made. The district court judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* The district court is also empowered to “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff has set forth eight objections to the Magistrate Judge’s Report and Recommendation, ECF No. 77. Each of these objections is examined in turn.

**1. *The Magistrate Judge entered the report and recommendation before permitting Plaintiff to file a reply to Defendants’ Response to Plaintiff’s Cross-Motion for Summary Judgment***

Defendants filed a motion for summary judgment on March 29, 2013. ECF No. 40. The motion was set for hearing without oral argument on September 16, 2013, after a delay to accommodate the Plaintiff. ECF Nos. 48, 60. Plaintiff did not file his opposition to summary judgment until September 10, 2013, just six days before the hearing date. Plaintiff also filed a cross-motion for summary judgment on September 10, 2013, which was set for the same September 16, 2013, hearing date as Defendants’ motion for summary judgment. Defendants filed a response to Plaintiff’s cross-motion for summary judgment on September 24, 2013. ECF No. 73.

The Magistrate Judge noted in his Report and Recommendation that the timing of Plaintiff’s “cross-motion did not afford Defendants with adequate time to

1 respond prior to the hearing date. ECF No. 74 at n.1. The Magistrate Judge  
2 additionally noted that because Defendants were prevailing on summary judgment,  
3 Plaintiff could not prevail on his cross-motion in any event. *Id.*  
4

5 This Court finds that Plaintiff's objection is moot. Even had the Magistrate  
6 Judge delayed ruling on Plaintiff's cross-motion for summary judgment until  
7 Plaintiff could file a reply brief, Plaintiff's cross-motion would have become moot  
8 when the Magistrate Judge issued his report and recommendation to grant  
9 Defendants' motion for summary judgment and dispose of the case. ECF No. 74.  
10

12       **2. *The Magistrate Judge entered the report and recommendation before  
13 Plaintiff's prior appeal to the district court was resolved***

14       Plaintiff previously filed an "appeal with objections" of the Magistrate  
15 Judge's order denying in part Plaintiff's Motion for Continuance to Permit  
16 Discovery and to Oppose Summary Judgment and denying Plaintiff's Motion for  
17 Hearing with Oral Argument, ECF No. 60. Plaintiff objected that the Magistrate  
18 Judge issued his report and recommendation before receiving the benefit of the  
19 district court's order on Plaintiff's appeal. However, after Plaintiff filed his  
20 objections that district court issued an Order Overruling Plaintiff's Objections and  
21 Denying Appeal, ECF No. 78. Plaintiff's objection is therefore moot as the district  
22 court determined that his prior appeal and objections were without merit.  
23  
24

27       **3. *Sufficiency of the findings and recommendations***

1 Plaintiff's objections numbers three through eight each attack the Magistrate  
2 Judge's proposed findings and recommendations.  
3

4 The Court has reviewed the Magistrate Judge's Report and Recommendation  
5 and the facts presented at summary judgment. The Court concludes that the  
6 Magistrate Judge's factual findings are supported by the record and that the  
7 recommendation to grant summary judgment in favor of the Defendants is  
8 appropriate in light of summary judgment standards and FOIA law.  
9

10 Therefore, the Court adopts the Report and Recommendation in its entirety  
11 and dismisses this action with prejudice.  
12

13 Accordingly, **IT IS HEREBY ORDERED:**  
14

15 1. The Court **ADOPTS** Magistrate Judge Rodgers' Report and  
16 Recommendation, **ECF No. 74.**  
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18 2. Defendants' Motion for Summary Judgment, **ECF No. 40,** is  
19 **GRANTED.**  
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21 3. Plaintiff's Motion for Summary Judgment, **ECF No. 67,** is **DENIED.**  
22

23 4. Plaintiff's Complaint, **ECF No. 6,** is **DISMISSED WITH**  
24 **PREJUDICE.**  
25

26 5. All hearings and other deadlines are **STRICKEN.**  
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28 / / /  
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6. This file shall be **CLOSED** and **JUDGMENT** shall be **ENTERED**  
for **DEFENDANTS**.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide a copy to the *pro se* Plaintiff and to counsel for Defendants.

**DATED** this 13th day of December, 2013.

s/ Rosanna Malouf Peterson  
ROSANNA MALOUF PETERSON  
Chief United States District Court Judge